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Attorneys for Respondents

David Saxe Productions, LLC and

V Theater Group, LLC

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CORNELE A. OVERSTREET, Regional Director )  
of the Twenty-Eighth Region of the National Labor )  
Relations Board, for and on behalf of the National )  
Labor Relations Board )

Petitioner, )

vs. )

DAVID SAXE PRODUCTIONS, LLC and V )  
THEATER GROUP, LLC )

Respondent. )

Case No. 2:18-cv-02187-APJ-NJK

**RESPONDENTS DAVID SAXE  
PRODUCTIONS, LLC AND V  
THEATER GROUP, LLC'S ANSWER  
TO PETITION FOR A TEMPORARY  
INJUNCTION UNDER SECTION 10(j)  
OF THE NATIONAL LABOR  
RELATIONS ACT**

David Saxe Productions, LLC and V Theater Group, LLC ("Respondents" or "Employers"), by and through their counsel of record, the law firm of Kamer Zucker Abbott, answers Petitioner's Petition by denying each and every allegation in all paragraphs, except for those paragraphs and portions of paragraphs expressly and specifically admitted or otherwise referenced *infra*:

1. Answering Paragraphs 1, 2, 3 and 4 of the Petition, Respondent states that the allegations contained therein are legal conclusions and/or procedural statements that require no answer, but to the extent they contain factual allegations, Respondent denies each and every allegation contained in Paragraphs 1, 2, 3, and 4 of the Petition.

2. Respondent admits Paragraphs 5 and 6 of the Petition.

3. Answering Paragraphs 7 through 14 of the Petition, Respondent admits only that the respective documents were filed on or around the respective alleged dates. Respondents deny each and every other allegation contained in Paragraphs 7 through 14 of the Petition.

4. Answering Paragraphs 15 and 16(a) of the Petition, Respondent states that the allegations contained therein are legal conclusions and/or procedural statements that require no answer, but to the extent they contain factual allegations, Respondent denies each and every allegation contained in Paragraphs 15 and 16(a) of the Petition.

5. Answering Paragraphs 16(b), 16(c) and 16(d) of the Petition, Respondent admits only that the respective documents were filed on or around the respective alleged dates and that the hearing before an administrative law judge commenced on September 11, 2018 and concluded on November 13, 2018. Respondents deny each and every other allegation contained in Paragraphs 16(b), 16(c) and 16(d) of the Petition.

6. Respondent admits Paragraphs 18(a) through 18(k) and Paragraph 19 of the Petition.

7. Answering Paragraph 20(a) of the Petition, Respondents respond as follows:

a. David Saxe -- Respondents admit title and supervisory status.

b. Takeshia "T.C." Carrigan -- Respondents admit title and supervisory status.

c. Shannon Hardin -- Respondents deny title, but admit supervisory status.

d. Michael Moore -- Respondents admit title and supervisory status.

e. Jason Pendergraft -- Respondents deny title, but admit supervisory status.

f. Tiffany DeStefano -- Respondents admit title and supervisory status.

g. Thomas "Tommy" Estrada, Sr. - Respondents admit title and supervisory status.

h. Daniel Mecca -- Respondents admit title, but deny supervisory status.

1 i. Steve Sojack – Respondents admit title, but deny supervisory status.

2 8. Respondents admit Paragraph 20(d) of the Petition.

3 9. Respondents admit Paragraphs 22(a) through Paragraph 22(h) of the Petition.

4 10. Respondents admit Paragraph 22(l) of the Petition.

5 11. Answering Paragraph 26 of the Petition, Respondents state that the allegations  
6 contained therein are legal conclusions and/or procedural statements that require no answer, but to  
7 the extent they contain factual allegations, Respondents deny each and every allegation contained in  
8 Paragraph 26 of the Petition.

9 12. Answering Paragraph 33 of the Petition, Respondents state that the allegations  
10 contained therein are legal conclusions and/or procedural statements that require no answer, but to  
11 the extent they contain factual allegations, Respondents deny each and every allegation contained in  
12 Paragraph 33 of the Petition.

13 13. Answering Petitioner's claim for relief, Respondents state that Petitioner is not  
14 entitled to the requested injunction or to any other kind of relief.

15 **AFFIRMATIVE DEFENSES**

16 1. Respondents do not admit any of the Petition's allegations except as specifically set  
17 forth above. For the purposes of this affirmative defense only, Respondents asserts that the Petition  
18 fails to state claims upon which relief may be granted.

19 2. Any actions taken by Respondents against any employee were motivated by  
20 legitimate, non-discriminatory business reasons and considerations, including employee misconduct.

21 3. Respondent won the election held on May 17, 2018, therefore, they are under no  
22 obligation to maintain the status quo in anticipation of bargaining with the union. Respondents have  
23 the right to alter employee schedules and make employment decisions consistent with business  
24 needs.

1           4.       The NLRB's consolidation of five (5) unfair labor practice charges and the NLRB's  
2 unilateral scheduling and re-scheduling of the administrative hearing is prejudicial to Respondents  
3 and is a violation of Respondents' due process rights and freedom of speech rights provided by the  
4 National Labor Relations Act ("the Act") and the United States Constitution.

5           5.       Petitioner's request for injunction is barred, in whole or in part, because the injuries  
6 and damages claimed by the alleged discriminatees were proximately caused by their own willful acts,  
7 negligence or omissions.

8           6.       Petitioner's request for injunction is barred, in whole or in part, because the injuries  
9 claimed by the alleged discriminatees resulted from acts and/or omissions of persons other than  
10 Respondents or their authorized agents.

11          7.       Petitioner's claims are barred because any actions taken by Respondent were proper,  
12 legitimate, justified, reasonable, and based upon good faith and were not motivated by hate, malice,  
13 or ill-will, or with the deliberate intent to injure the alleged discriminatees.

14          8.       Petitioner's claims are barred because any actions which are alleged to be the result  
15 of discrimination and/or retaliatory animus would still have been made or taken without any  
16 consideration of the alleged discriminatees' alleged protected activities.

17          9.       Petitioner's claims are barred because there is no nexus between any alleged  
18 protected activities of the alleged discriminatees and any alleged adverse employment actions they  
19 suffered.

20          10.      Petitioner's claims are without merit because it has had knowledge of all of the facts  
21 of this case since at least June 2018 and has waited six months, two months of which the parties  
22 have been attending a hearing on the merits of this case, to file this request for a 10(j) injunction.  
23 Further, the Petitioner through its counsel put Respondents on notice that it intended to file this  
24 Petition for an injunction on November 2, 2018 and then inexplicably waited 12 days to file the

Petition. This lack of urgency severely undercuts the Petitioner's argument that immediate relief is imperative and necessary.

11. Petitioner's request for injunctive relief is barred because Petitioner fails to demonstrate: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary injunctive relief; (3) the balance of equities tips in the NLRB's favor; or (4) the injunction is in the public interest.

12. Petitioner's request for injunctive relief is barred because there is an adequate remedy at law.

13. Respondents reserve the right to modify or supplement their affirmative defenses following further proceedings.

WHEREFORE, Respondents pray this Court for relief as follows:

1. That Petitioner's Petition be denied;
2. That Respondents be awarded its reasonable attorney's fees and costs in defense of this matter; and
3. For such and other further relief as the Court deems reasonable and proper.

DATED this 10<sup>th</sup> day of December, 2018.

Respectfully submitted,

KAMER ZUCKER ABBOTT

By:

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Attorneys for Respondents  
David Saxe Productions, LLC  
and V Theater Group, LLC

**CERTIFICATE OF SERVICE**

This is to certify that on the 10<sup>th</sup> day of November 2018, the undersigned, an employee of Kamer Zucker Abbott, served a copy of the foregoing **RESPONDENTS DAVID SAXE PRODUCTIONS, LLC AND V THEATER GROUP, LLC'S ANSWER TO PETITION FOR A TEMPORARY INJUNCTION UNDER SECTION 10(j) OF THE NATIONAL LABOR RELATIONS ACT** through the Electronic Case Filing system of the United States District Court, District of Nevada to:

Sara Demirok, Esq.  
National Labor Relations Board, Region 28  
2600 North Central Avenue, Suite 1400  
Phoenix, Arizona 85004

By: \_\_\_\_\_  
An employee of Kamer Zucker Abbott